

**Chapter 10****Guardianships****RULE 610.01      CONSOLIDATION      OF      ADOPTION      AND GUARDIANSHIP  
PROCEEDINGS**

If an adoption proceeding is pending involving a minor who is also the subject of a petition for guardianship, the proceedings will be consolidated and heard in the department designated by the presiding judge to hear consolidated adoption/guardianship proceedings.

**RULE 610.02      APPOINTMENT      OF      TEMPORARY      GUARDIAN      -      ADOPTION  
PENDING**

Attorneys should telephone the clerk in the designated judge's department to schedule a time and date for the petition to be heard. Attorneys should complete Judicial Council Form "Notice of Hearing" and cause same to be personally served, together with a copy of the petition, at least five days before the date selected on the minor, if the minor is fourteen years or over. If the petition is by persons other than the parents and if the parents of the minor are living, a Judicial Council Form "Notice of Hearing" and a copy of the petition should be served personally on such parents at least five days before the date selected. The court may require notice to other persons or may waive notice for good cause. [See Rule 610.07 and 610.08 regarding the necessity to file a Declaration Under Uniform Child Custody Jurisdiction Act.]

Attorneys should file the petition for appointment of a general guardian no later than the day before the hearing (if it has not previously been filed), obtain the case number and affix the case number to the temporary petition and proofs of service. Attorneys should deliver the petition, proofs of service and order, together with a copy of the petition for appointment of the general guardian and Declaration Under Uniform Child Custody Jurisdiction Act to the clerk in the department designated to hear the consolidated proceeding by 2:00 p.m. the day before the scheduled hearing so they can be reviewed.

Attorneys should appear in the designated department on the scheduled date and at least fifteen minutes before the scheduled time of hearing. Attorneys should advise the clerk that the petition has been scheduled for that time and date, and whether or not anyone is present to oppose the petition.

**RULE 610.03      APPOINTMENT OF      TEMPORARY GUARDIAN - NO ADOPTION  
PENDING**

Attorneys should choose a date for hearing any morning, Monday through Friday at 11:00 a.m., in Department 703. Attorneys should complete Judicial Council Form "Notice of Hearing" and cause same to be personally served, together with a copy of the petition, at least five days before the date selected on the minor, if the minor is fourteen years or over. If the petition is by persons other than the parents and if the parents of the minor are living, a Judicial Council Form "Notice of Hearing" and a copy of the petition should be served personally on such parents at least five days before the date selected. The court may require notice to other persons or may waive notice for good cause. [See Rules 610.07 and 610.08 regarding the necessity to file a Declaration Under Uniform Child Custody Jurisdiction Act.]

No later than 2:00 p.m. the day before the hearing, attorneys must file the petition for appointment of a general guardian (if it has not previously been filed), obtain the case number and affix the case number to the temporary petition and proofs of service. Attorneys must deliver the petition, proofs of service and order, together with a copy of the petition for appointment of the general guardian and Declaration Under Uniform Child Custody Jurisdiction Act to the designated area in the Probate Division of the Clerk's Office no later than 2:00 p.m. the day before the hearing.

At the time and on the date selected, attorneys should appear before the calendar call and advise the clerk that they are appearing on the petition and whether or not anyone is present to oppose the petition. If no opposition is presented and the matter appears proper, the court will grant the petition. If there is any opposition, the matter may be heard at the end of the calendar or continued to a date specific.

**RULE 610.04      APPOINTMENT OF GENERAL GUARDIAN**

Petitions for appointment of general guardians are set on calendar for hearing, and appearance of the proposed guardian and counsel may be required. Petitions for appointment of a guardian of the person only by a relative, and petitions for appointment of a guardian of the person and estate filed by the Public Guardian may be recommended for approval if examiners would otherwise so recommend and all other requirements are met. The court does not favor waiver of statutory notice on the appointment of a general guardian of a minor. However, the court can dispense with notice if sufficient grounds are given to justify an allegation that notice prescribed by Probate Code Section 1511 cannot be given with reasonable diligence, or that the giving of such notice is contrary to the interests of justice. In all cases the court will require

nomination or consent of a minor if such minor is fourteen years of age or older and if such minor has the capacity to nominate.

Where a petition seeks the appointment of a non- petitioning guardian, a consent to serve as guardian must be filed for each non-petitioning proposed guardian.

Where a petition seeks the appointment of a relative (by blood or marriage) as guardian of the person, the petition and accompanying Declaration Under Uniform Child Custody Jurisdiction Act (Rule 610.08) must be filed in duplicate.

**RULE 610.05      WAIVER OF INVESTIGATION AND REPORT**

When a petition requests appointment of a guardian of the estate only, the investigation otherwise required by Probate Code Section 1513 is waived, and no guardianship investigation fee is required.

**RULE 610.06      GUARDIANSHIP OF THE PERSON - NOTICE**

"Relative" guardianships: When a petition requests appointment of a relative (by blood or marriage) as guardian of the person of a minor, notice of the hearing and a copy of the petition shall be mailed by first-class mail, at least 15 days prior to the hearing, to: Social Services Supervisor II (Probate Court - Legal Guardianship), Orange County Social Services Agency, P. O. Box 6685, Orange, California 92613-6685.

"Non-relative" guardianships: When a petition requests appointment of a non-relative as guardian of the person of a minor, notice of the hearing and a copy of the petition must be mailed to the Orange County Social Services Agency as noted above. Additionally, a notice of the hearing and a copy of the petition must be mailed by first-class mail, at least 15 days prior to the hearing, to the Director of Social Services, 744 P Street, N.S. 1967, Sacramento, California 95814.

Petitions for appointment of a guardian of the person shall be set for hearing at least 45 days after the date of filing. Although only 15 days notice to the Director of Social Services and to the County Social Services Agency is required by the Probate Code, counsel are encouraged to send such notice as early as possible to insure that the proceeding is not delayed because these agencies did not have sufficient time to complete their investigation.

(Revised effective September 1, 1998)

**RULE 610.07      GUARDIANSHIP OF THE PERSON - INVESTIGATION FEES**

When a petition requests appointment of a guardian of the person, a nonrefundable guardianship investigation fee based upon the actual cost of the investigation as set forth in the statute and current fee schedule must be paid to the clerk in addition to the regular filing fee. (Probate Code Section 1513.1.)

(Revised effective October 1, 1993)

**RULE 610.08      GUARDIANSHIP OF THE PERSON - ADDITIONAL DATA AND  
DECLARATION      UNDER      UNIFORM      CHILD      CUSTODY  
JURISDICTION ACT**

All petitions which request appointment of a guardian of the person shall have an attachment stating the social security number, date of birth, and driver's license number for each of the following persons:

- A.    Proposed guardian(s);
- B.    Ward's natural or adoptive parent(s); and
- C.    Person(s) having physical custody of ward.

If any of this data cannot be obtained, a declaration under penalty of perjury by the petitioner shall be attached to the petition setting forth the efforts made to obtain the data.

In all matters affecting the custody of a minor, each party must file, with their first pleading, a Judicial Council form "Declaration Under Uniform Child Custody Jurisdiction Act", executed by the party. Such matters include appointment of a guardian of the person (temporary or general), removal of a guardian of the person, appointment of a successor guardian of the person, termination of guardianship of the person, and any petition involving visitation.

**RULE 610.09      GUARDIANSHIP OF THE PERSON - COPY**

A petition which seeks the appointment of a guardian of the person must be accompanied by a copy for the Court's use.

**RULE 610.10      PETITIONS      FOR      APPOINTMENT      OF NON-PROFIT  
CORPORATIONS AS GUARDIANS OF MINORS**

In addition to the usual allegations in a petition for appointment of a guardian of the person and/or estate, a petition seeking the appointment of a non-profit corporation qualified to act as such pursuant to Probate Code Section 2104 must contain specific allegations to enable the Court to determine that the corporation meets the requirements of Probate Code Section 2104.

**RULE 610.11      DUTIES OF GUARDIAN - LIABILITY OF PARENTS TO  
SUPPORT CHILD**

As parents are required by statute to support their children, the court will not permit guardianship funds to be used for the minor's maintenance where one or both parents are living, except upon a showing of the parent's financial inability (supported by an Income and Expense Declaration) or other circumstances which would justify the court in departing from this rule in the best interests of the minor.

**RULE 610.12      GUARDIANS' ACCOUNTS****A.      Interim Accounts:**

The form of accounts should follow the form of accounts for decedents' estates set forth above in Chapter 8 of the Probate Rules.

Where a guardian accounts for the assets of more than one minor, the accounting for each minor must be set forth separately.

**B.      Final Accounts:**

When a copy of a final account and written notice of the hearing thereof is served upon the ward not less than 15 days prior to the hearing, or the ward's written approval is filed, no appearance by the ward may be necessary. However, the court does not favor the waiver by the ward of the guardian's final account when the ward has reached majority and normally will not approve a report when the account is waived unless the ward is present in court at the time of the hearing.

Each final report/account of a guardian upon termination of the proceeding due to the ward's death must contain an allegation either that notice of the ward's death has been provided to the Director of Health Services required by Probate Code Section 215 or that no such notice is required. (See Welfare and Institutions Code Section 14009.5)

**RULE 610.13      ALLOWANCE OF COMPENSATION IN GUARDIANSHIPS**

Pursuant to the authority of Probate Code Sections 2640 et seq., the guardian or the attorney for the guardian may petition the court to determine compensation in the manner and time authorized by such Code sections. However, the court prefers to determine the amount of compensation at the time a guardian's account is considered.

**RULE 610.14      ADDITIONAL INDEPENDENT POWERS**

The court may, on the petition of the guardian, either at the time of appointment or later, grant additional independent powers to the guardian as authorized by Sections 2590 and 2591 of the Probate Code. Additional independent powers are not lightly granted. The petition must state for each Section 2591 power requested the facts and reasons which justify the independent exercise of the power. The court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of guardianship.

**RULE 610.15      BONDS OF GUARDIANS**

The court ordinarily will fix the bond of a guardian of the estate in the amount permitted under Section 2320 of the Probate Code for a bond given under that section by an admitted surety insurer. However, upon a showing of good cause, the court may increase or decrease the amount and, if it appears likely that the estate will satisfy the conditions of Subdivision (b) of Section 2628 of the Probate Code for the duration of the guardianship, the court may dispense with such bond.

All petitions for a reduction of bond must be filed, set for hearing, and noticed pursuant to Probate Code Section 2329 except as provided in Probate Code Section 2328 (relating to funds and property deposited in a bank or trust company, etc., not to be withdrawn except on order of the court. See Rule 613.06).

**RULE 610.16      INVESTMENTS BY GUARDIAN**

The standard set forth in Section 16040(a) of the Probate Code, providing for investments by trustees, is the standard applied by the Probate Court in authorizing proposed investments by guardians. The guardian should also consider the circumstances of the estate, indicated cash needs, and the date of prospective termination of the guardianship. The Probate Court does not act as an investment counselor but suggests that the investments by guardians should be prudent and in keeping with the size and character of the ward's estate. Investments in existence at the time of the creation of the guardianship usually may be maintained, subject to the provisions of Section 16008 of the Probate Code. Investments other than as provided in Probate Code Section 2574 require court authorization unless the guardian is empowered to so act pursuant to Probate Code Sections 2590 et seq.

The court will not ordinarily approve the investment of the ward's funds in unsecured loans, secured loans to near relatives, or debenture bonds except those which are part of a large issue, well-seasoned, and listed on an established security exchange.

The court will not approve the investment of the ward's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

Investment in real estate, either by purchase or encumbrance, usually will not be granted unless supported by an M.A.I. appraisal.

**RULE 610.17      DECEASED WARDS - CLAIMS FOR UNPAID EXPENSES**

Claims for unpaid expenses of the guardianship, if allowed in full or in part by the guardian, shall be presented to the court for approval with the guardian's allowance attached on Orange County Form 902. Bills and invoices, complete in themselves, may be attached as claims to the approval form. If such bills and invoices are smaller than 8 ½ inches by 11 inches, they must be firmly affixed to a backing paper of that size to permit court filing.

**RULE 610.18      DECEASED WARDS - LIQUIDATION OF ESTATE**

Petitions and orders under Probate Code Section 2631 for authority to liquidate the estates of deceased wards must be submitted on Orange County Form 904.

**RULE 610.19      ATTORNEYS APPOINTED FOR WARDS OR PROPOSED WARDS**

The court is aware that, for attorneys appointed to represent wards or proposed wards, the prospect of future employment by the guardian might create situations which could lead to violation of Rules 3-110 and 3-310 of the Rules of Professional Conduct. Actual employment by a guardian after representation of the ward or proposed ward presents a high risk of violation of Rule 3-310(d) of the Rules of Professional Conduct. Accordingly, all attorneys who are appointed by the court to represent wards or proposed wards, pursuant to Section 1470 of the Probate Code, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the guardian in the same guardianship.